

RECEIVED

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DUCKET FILE COPY ORIGINAL

COMMENTS OF SAMPIT BROADCASTERS

1. In its NPRM, the Commission announced that it is considering the elimination of the "automatic stay" portion of §1.420(f) of the rules. NPRM at ¶1. This rule provides for an automatic stay, upon the filing of a petition for reconsideration, of any Commission order modifying an authorization to specify operation on a different channel. It applies to proposals to amend the TV or FM Table of Allotments where the Commission has modified the authorization of the petitioner or another licensee or permittee to specify operation on a different channel. NPRM at ¶3. The Commission has stated its belief that the automatic stay provision

No. of Copies rec'd
List A B C D E

is no longer necessary, that it provides an incentive for the filing of frivolous petitions for reconsideration and that its elimination will help to expedite the provision of expanded service to the public. It is considering eliminating the provision on a retroactive basis by lifting the stay with respect to any petition for reconsideration or application for review that is pending as of the effective date of the Commission's Report and Order in this proceeding. NPRM at ¶9.

2. The proposed elimination of the automatic stay provision is shortsighted and will cause more harm than good to the public interest. Elimination of the automatic stay provision would abolish an important rule that has protected licensees and permittees from having to make unjustified changes to their stations' facilities. In some FM rulemaking proceedings, the licensee of an FM station seeking an upgrade may petition the Commission to order another station to change its operating frequency to accommodate the petitioner. If the Commission grants the upgrading station's petition, the affected station is ordered to make the necessary changes to its station's facility. The automatic stay provision protects affected stations by postponing the obligation to modify the station's facilities while the licensee seeks reconsideration of the Commission's rule making decision. In some cases, reconsideration has been granted months or years later, and the Commission's order forcing the station to change frequencies has been overturned or modified.

3. This problem was exemplified in the Commission's decision in FM Table of Allotments (Elkins, WV, et. al), 6 FCC Rcd 5830 (1991). In that case, the Commission issued a Report and Order authorizing an FM station at Elkins, West

Virginia, to upgrade its facilities. In order to accommodate that upgrade, an FM station at Westernport, Maryland, was ordered to move from Channel 224A to Channel 283A. A petition for reconsideration of the Commission's decision was filed which automatically stayed the effectiveness of the Commission's Report and Order. More than ten months later, the Commission reconsidered its earlier decision and, instead, ordered the station at Westernport, Maryland, to move from Channel 224A to 266A. See FM Table of Allotments (Elkins, WV, et. al), 7 FCC Rcd 5527 (1992). The Westernport station was protected from having to go forward with the Commission's original order by the automatic stay provision of §1.420(f).

4. Similarly, in FM Table of Allotments (Ashland, MO, et. al.), 8 FCC Rcd 1799 (1993), released March 17, 1993, the Commission substituted Channel 232C2 for Channel 232A at California, Missouri. In order to accommodate this upgrade, the Commission substituted Channel 292A for Channel 232A at Rolla, Missouri. On reconsideration, released over a year later, the Commission granted a counterproposal that had been denied in its original Report and Order and instead substituted Channel 248A for Channel 232A at Rolla, Missouri. See, Table of FM Allotments (Ashland, MO, et. al.), 9 FCC Rcd 2306 (1994). Without the automatic stay provision, the licensee of the Rolla station would have been forced to go forward with a channel change that was later modified by the Commission.

5. Upgrading stations are also protected by the automatic stay provision. In Table of FM Allotments (Lancaster, WI, et. al.), 6 FCC Rcd 6113 (1991), the Commission permitted an upgrade for a station at Manchester, Iowa, from Channel

234A to Channel 234C3 and denied a counterproposal. On reconsideration, two and one half years later, the Commission granted the counterproposal and rescinded the upgrade at Manchester, Iowa. See, Table of FM Allotments, 9 FCC Rcd 1931 (1994). Because of the automatic stay provision, the licensee of the Manchester station was permitted to await the final outcome of the proceeding before being required to file an application for construction permit to upgrade its station.

6. Had there been no automatic stay provision in the rules, the licensees of the stations discussed supra would have been unfairly burdened with the task of changing their stations' facilities only to later find that the Commission's decision is overturned and the outcome reversed. The automatic stay provision enables such licensees to maintain the status quo pending the final outcome of a rulemaking proceeding.

7. While some parties may have taken advantage of the automatic stay provision to file frivolous appeals to unfairly delay a competitor's facility change, other licensees and permittees have been protected by the automatic stay rule and have avoided unnecessary facility changes. In addition, licensees that receive an upgrade are protected from the obligation to file an application for construction permit and construct and operate their changed facilities while an appeal of the Commission's rulemaking decision is pending. Without the automatic stay provision, those licensees will be forced to spend valuable resources to file an application and later construct their new facilities without assurance that their authority to make such changes will not be rescinded by later Commission action. Preserving the status quo with the


automatic stay provision benefits both the upgrading licensees and the adversely-affected station licensee.

8. Therefore, since the automatic stay provision of §1.420(f) has provided an important benefit for broadcasters at a small cost to the earlier provision of upgraded service, the Commission should not eliminate it.

WHEREFORE, the above facts considered, Sampit Broadcasters respectfully requests that the Commission retain the automatic stay provision contained in §1.420(f) of its rules.

Respectfully submitted,

SAMPIT BROADCASTERS

By: 

Gary S. Smithwick
Shaun A. Maher

Its Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, DC 20036
(202) 785-2800

August 28, 1995